

Chapter 9.48**DISCLOSURE OF HAZARDOUS MATERIALS****Sections:**

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Section 9.48.010 Definitions.

For the purpose of this chapter, the terms listed in this section shall be defined as follows:

"Carcinogen" refers to a substance or agency which causes cancer. For purposes of this ordinance carcinogens are those substances specified on the list developed by the United States Department of Health and Human Services to be known or anticipated.

"CAS number" means the unique identification name as assigned by the Chemical Abstracts Service to specific chemical substances.

"Chemical name" means the scientific designation of a substance in accordance with the International Union of Pure and Applied Chemistry or the system developed by the Chemical Abstracts Service.

"Common name" means any designation or identification such as code name, code number, trade name or brand name used to identify a substance other than by its chemical name.

"Disclosure form" means the written request for information prepared pursuant to Section 9.48.050.

"EPA Waste Stream Code" means the identification number assigned pursuant to the regulations of the U. S. Environmental Protection Agency to specific types of hazardous waste.

"Handle" means to generate, treat, store or dispose of a hazardous waste in any fashion.

"Hazardous material" means any hazardous substance or hazardous waste as defined in this section, or any material designated pursuant to Section 9.48.020.

"Hazardous substance" means any substance or product:

1. For which the manufacturer or producer is required to prepare a MSDS for the substance or produce pursuant to the Hazardous Substances Information and Training Act (commencing with Section 6360, Chapter 2.4, Part 1 of Division 5 of the California Labor Code) or pursuant to any applicable federal law or regulation; or,

2. Which is listed as a radioactive material set forth in Chapter 1, Title 10, Appendix B, maintained and updated by the Nuclear Regulatory Commission; or,

3. Which is listed in Parts 172 and 173 of Title 49 of the Code of Federal Regulations.

"Hazardous waste" means hazardous or extremely hazardous waste as defined by

Sections 25115 and 25117 of the California Health and Safety Code and set forth in Sections 66680 and 66685 of Title 22 of the California Administrative Code.

"MSDS" means a Material Safety Data Sheet prepared pursuant to Section 6390 of the California Labor Code or pursuant to the regulations of the Occupational Safety and Health Administration of the United States Department of Labor.

"Person" means an individual, trust, firm, joint stock company, corporation, partnership, association, City, County, district and the State, or any department or agency thereof.

"Physician" means any person who holds a valid certificate from the State of California to practice the healing arts.

"Radioactive material" means any amount of radioactive materials as listed in Chapter 1, Title 10, Appendix B, maintained and updated by the Nuclear Regulatory Commission.

"Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing into the environment.

"SIC Code" means the identification number assigned by the Standard Industrial Classification Code to specific types of businesses.

"Use" includes the handling, processing or storage of a hazardous substance.

"User" means any person who uses a hazardous substance or handles a hazardous waste. (Ord. 5569 § 1, 1987; Ord. 5134 § 1, 1983)

Section 9.48.020 Designation of a hazardous material.

A material may be added to the list of hazardous materials as defined in Section 9.48.010 upon a finding by the Fire Chief that the material, because of its quantity, concentration or physical or chemical characteristics, poses a significant present or potential hazard to human health and safety or to the environment if released into the community. A material added to the list of hazardous materials pursuant to this Section shall be designated as either a hazardous substance or hazardous waste. (Ord. 5569 § 1, 1987; Ord. 5134 § 1, 1983)

Section 9.48.030 Filing of a hazardous material business plan.

A. Any person who uses or handles hazardous materials, except as provided in subsection B, which handles hazardous materials or mixtures containing hazardous materials, having a quantity during the reporting year equal to, or greater than, a total weight of five hundred pounds, or a total volume of fifty-five gallons, or a total volume of two hundred cubic feet at standard room temperature and pressure for compressed gas, or total weight of ten pounds for organic peroxides, or any known or suspected carcinogen, radioactive material, Class A poison, Class A or Class B explosive, shall, during the month of January, submit a completed inventory form to the Fire Department.

B. Any person who, during the calendar year, for the first time becomes a user or handler of hazardous material, must submit a completed business plan to the Fire Department within thirty days of becoming a user or handler. The form shall be accompanied by the appropriate prorated fee as established pursuant to Section 9.48.080. Thereafter, said person shall comply with the provisions of Subsection A of this section.

C. Each handler shall submit its business plan to the Fire Department and certify that it meets the requirements of this chapter. If, after review, the Fire Department determines that the handler's business plan is deficient in any way, the Fire Department shall notify the handler of these defects. The handler shall submit a corrected business plan within thirty days of the notice. If a handler fails after reasonable notice to submit a business plan in compliance with this chapter, the Fire Department shall immediately take appropriate action to enforce penalties specified in this chapter.

D. In addition, whenever a substantial change in the handler's operations occurs which requires a modification of its business plan, the handler shall submit a copy of the plan revisions

to the Fire Department within thirty days of the operational change. A substantial change shall include, but shall not be limited to the following:

1. A one hundred percent or more increase in the quantity of a previously-disclosed material.
 2. Any handling of a previously-undisclosed hazardous material subject to the inventory requirements of this chapter.
 3. Change of business address.
 4. Change of business ownership.
 5. Change of business name.
- E. The handler shall, in any case, review the business plan, submitted pursuant to Subsections A and B, on or before January 1, 1988, and at least once every two years thereafter, to determine if a revision is needed and shall certify to the Fire Department that the review was made and that any necessary changes were made to the plan. A copy of these changes shall be submitted to the Fire Department as a part of this certification. (Ord. 5569 § 1, 1987; Ord. 5134 § 1, 1983)

Section 9.48.040 Content of the business plan.

Business plans shall include all of the following:

A. The inventory of information required by Section 9.48.050 and whatever additional information that the Fire Department finds is necessary to protect the health and safety of persons, property, or the environment. Any such information is, however, subject to trade secret protection pursuant to Section 9.48.090(B).

B. Emergency response plans and procedures in the event of a reportable release or threatened release of a hazardous material, including, but not limited to, all of the following:

1. Immediate notification to the appropriate local emergency rescue personnel.
2. Procedures for the mitigation of a release or threatened release to minimize any potential harm or damage to persons, property or the environment.
3. Evacuation plans and procedures, including immediate notice, for the business site.
4. Training for all new employees and annual training, including refresher courses, for all employees in safety procedures in the event of a release or threatened release of a hazardous material, including, but not limited to, familiarity with the plans and procedures specified in subsections (B)(1)--(3). These training programs may take into consideration the position of each employee.

C. Any business required to file a pipeline operations contingency plan in accordance with the California Pipeline Safety Act of 1981 (Chapter 5.5 (commencing with Section 51010) of Part 3 of Division 1 of Title 5 of the Government Code) and the regulations of the Department of Transportation, found in Part 195 of Title 49 of the Code of Federal Regulations, may file a copy of those plans with the Fire Department instead of filing an emergency response plan specified in subsection B of this section.

D. Any business operating a farm exempted by Section 9.48.070(J) from filing the information specified in subsections (B)(1)--(3) shall, notwithstanding this exception, provide the training programs specified in subsection (B)(4) of this section. (Ord. 5569 § 1, 1987; Ord. 5134 § 1, 1983)

Section 9.48.050 Disclosure information.

A. Upon receipt of a business plan, the Fire Department shall forward the fee payment to the City Revenue Division for processing.

B. The Fire Department shall maintain files of all business plans received, indexed by street and company name. The business plan and revisions shall be available for public inspection during the regular business hours of the Fire Department, except that those portions

of the business plan specifying the precise location where hazardous materials are stored and handled onsite, including any maps of the site, and any information subject to the provisions of Section 9.48.090 relating to trade secrets, shall not be available for public inspection.

C. The Fire Department shall keep a record of all persons who request access to the hazardous materials disclosure forms. The record shall include:

1. The person's name, address and telephone number, as determined by the showing of appropriate identification;
2. Name and address of the person, business or governmental agency such person represents;
3. Identity of the specific file(s) examined or requested to be copied. (Ord. 5569 § 1, 1987; Ord. 5134 § 1, 1983)

Section 9.48.060 Content of the disclosure form.

A. The disclosure form shall be prepared by the Fire Department. The disclosure form shall include, but not be limited to, requests for the following:

1. A copy of the MSDS for every hazardous substance used by the person completing the disclosure form; provided, however, that no such copy need be provided for any hazardous substance for which the Fire Department has on file a copy of the MSDS.
2. A listing of the chemical name and common names of every hazardous substance or chemical product handled by the business.
3. The EPA Waste Stream Code of every hazardous waste handled by the person completing the disclosure form.
4. The maximum amount of each hazardous material disclosed in either subsection (A)(2) or (3) which is handled or used at any one time by the user over the course of the year.
5. Sufficient information on how and where the hazardous materials disclosed in subsections (A)(2) and (3) are handled or used by the user to allow fire and safety personnel to prepare adequate emergency response to potential releases of the hazardous material.
6. Sufficient information on any releases of the hazardous materials disclosed in subsections (A)(2) and (3) into the air, water, sewer or land to permit the City to understand the sources and content of hazardous material releases.
7. The SIC Code of the business, if applicable.
8. The name and telephone number of the person representing the business and able to assist emergency personnel in the event of an emergency involving the business during non-business hours.

B. Upon request all users must provide information in addition to that required in the disclosure form as follows:

1. To the Fire Department any information determined by the Fire Department to be necessary to protect the public health, safety or the environment; and
2. To any physician where the physician determines that such information is necessary to the medical treatment of his or her patient. (Ord. 5569 § 1, 1987; Ord. 5134 § 1, 1983)

Section 9.48.070 Exemptions from disclosure.

The following materials, persons or entities shall be exempt, as specified, from the disclosure requirements under this chapter:

- A. A material designated as a hazardous material by this chapter solely by its presence on the Nuclear Regulatory Commission list of radioactive materials shall be exempt from the requirement that a MSDS be submitted with the disclosure form.
- B. Hazardous substances contained in food, drug, cosmetic or tobacco products which are maintained by the business for resale purposes.
- C. Any person using or handling less than five hundred pounds, fifty-five gallons per

year, or two hundred cubic feet at standard temperature and pressure for compressed gas, whichever is the lesser, of a hazardous material shall be exempted from the requirement of disclosure of that use or handling unless the Fire Chief has provided notice that the weight or volume limits of this exemption for a specific hazardous material has been lowered in response to public health concerns.

The exemption of this subsection shall not apply to the using or handling of carcinogens except to the extent that such carcinogens are handled or used solely for personal purposes.

D. Hazardous material contained solely in a consumer product for direct distribution to, and use by, the general public is exempt from the business plan requirements of this chapter unless the Fire Department has found, and has provided notice to the business handling the product, that the handling of certain quantities of the product requires the submissions of a business plan, or any portion thereof, in response to public health, safety or environmental concerns.

E. Any person, while engaged in the transportation of hazardous materials, including storage directly incident thereto, provided that such materials are accompanied by shipping papers prepared in accordance with the provisions of Title 49, Code of Federal Regulations, Subchapter c.

F. No MSDS shall be required for any hazardous substance for which an MSDS is not available at the time disclosure is required; provided, however, that such MSDS shall be submitted to the Fire Department within fifteen days after receipt by the user of the MSDS.

G. The Fire Department may, in exceptional circumstances, following notice and public hearing, exempt from the inventory provisions of this chapter any hazardous substance listed in Parts 172 and 173 of Title 49 of the Code of Federal Regulations if the Fire Department finds that the hazardous substance would not pose a present or potential danger to the environment or to human health and safety if the hazardous substance was released into the environment. The Fire Department shall specify in writing the basis for granting any exemption under this subsection. The Fire Department shall send a notice to the office within five days of the effective date of any exemption granted pursuant to this subsection.

H. The Fire Department, upon application by a handler, may exempt a handler under the conditions it deems proper from any portion of the business plan upon a written finding that the exemption would not pose a significant present or potential hazard to human health or safety or to the environment or affect the ability of the Fire Department and emergency rescue personnel to effectively respond to the release of a hazardous material and that there are unusual circumstances justifying this exemption. The Fire Department shall specify in writing the basis for any exemption under this subsection.

I. The Fire Department upon application by a handler may exempt a hazardous material from the inventory provisions of this chapter upon proof that the material does not pose a significant present or potential hazard to human health and safety or to the environment if released into the workplace or environment. The Fire Department shall specify in writing the basis for any exemption under this subsection.

J. The Fire Department shall exempt a business operating a farm for purposes of cultivating the soil or raising or harvesting any agricultural or horticultural commodity from filing the information with the exception of the inventory in the business plan if all the following requirements are met:

1. The handler annually provides the inventory of information required by Section 9.48.060 to the County Agricultural Commissioner before January 1st of each year.

2. Each building in which hazardous materials subject to this chapter are stored is posted with signs, in accordance with regulations which the office shall adopt, which provide notice of the storage of any of the following:

- a. Pesticides.

- b. Petroleum fuels and oils.

c. Types of fertilizers.

3. Each County Agricultural Commissioner forwards the inventory to the Fire Department within thirty days after receiving the inventory.

K. The Fire Department shall adopt procedures to provide for public input when approving any applications submitted pursuant to Subsections H and I of this Section. (Ord. 5569 § 1, 1987; Ord. 5134 § 1, 1983)

Section 9.48.080 Fees and penalties for late filing.

A. Any person who willfully prevents, interferes with or attempts to impede the enforcement of this chapter by any authorized representative of the Fire Department or who willfully fails to fulfill the reporting requirements herein is, upon conviction, guilty of a misdemeanor.

B. The City Council shall by resolution establish a schedule of fees to be paid by persons using or handling hazardous materials which is sufficient to cover the costs to the City of administering this chapter. Said resolution shall include a schedule of penalties to be assessed for the late filing of any disclosure form. (Ord. 5569 § 1, 1987; Ord. 5134 § 1, 1983)

Section 9.48.090 Trade secrets.

A. If a user believes that a request for information made by either the disclosure form or otherwise pursuant to this chapter involves the release of a trade secret, the user shall so notify the Fire Department in writing. As used herein, trade secret shall have the meaning given to it by Section 6254.7 of the Government Code and Section 1060 of the Evidence Code.

B. Subject to the provisions of this section, the Fire Department shall protect from disclosure any trade secret coming into its possession when requested to do so in writing by the user.

C. Any information reported to or otherwise obtained by the Fire Department, or any of its representatives or employees, which is exempt from disclosure pursuant to subsection B shall not be disclosed to anyone except:

1. To an officer or employee of the City, the State of California, or the United States of America, in connection with the official duties of such officer or employee under any law for the protection of health or to contractors with the City and their employees if, in the opinion of the Fire Chief, such disclosure is necessary and required for the satisfactory performance of a contract for performance of work; or

2. To any physician where the physician determines that such information is necessary to the medical treatment of his or her patient.

D. For the purposes of this section, fire and emergency response personnel and County Health personnel operating within the jurisdiction of the City shall be considered employees of the City.

E. Any officer or employee of the City or former officer or employee, who by virtue of such employment or official position has obtained possession of or has access to information, the disclosure of which is prohibited by this section, and who, knowing that disclosure of the information is prohibited, knowingly and willfully discloses the information in any manner to any person not entitled to receive it, shall be guilty of a misdemeanor. Any contractor with the City and any employee of such contractor, who has been furnished information as authorized by this section, shall be considered to be an employee of the City for purposes of this section. Any physician who has been furnished information or who has obtained information pursuant to subsection (C)(2) of this section and who, knowing that the disclosure of the information is prohibited, knowingly and willfully discloses the information, shall be guilty of a misdemeanor.

F. Information certified by appropriate officials of the United States, as necessarily kept secret for national defense purposes, shall be accorded the full protections against disclosure

as specified by such officials or in accordance with the laws of the United States.

G. Upon receipt of a request for the release of information to the public which includes information which the user has notified the Fire Department is a trade secret pursuant to subsection A of this section, the Fire Department shall notify the user in writing of said request by certified mail. The Fire Department shall release the information thirty days after the day of mailing said notice unless, prior to the expiration of said thirty days, the user institutes an action in an appropriate court for a declaratory judgment that said information is subject to protection under subsection B of this section and/or an injunction prohibiting disclosure of said information to the general public.

H. The provisions of this Section shall not permit a user to refuse to disclose information required to be disclosed pursuant to this Chapter. (Ord. 5569 § 1, 1987; Ord. 5134 § 1, 1983)

Section 9.48.095 Hazardous material release report.

A. Except as provided in subsection (B), a handler shall, upon discovery, immediately report any release or threatened release of a hazardous material in the City of riverside to the Riverside Fire Department. Each handler shall provide all State, City or County fire or public health or safety personnel and emergency rescue personnel with access to the handler's facility.

B. Subsection A of this section does not apply to any person engaged in transportation of a hazardous material on a highway which is subject to and in compliance with the requirements of Sections 2453 and 23112.5 of the California Vehicle Code. (Ord. 5720 § 1, 1989)

Section 9.48.100 Remedies.

A. Every civil action brought under this chapter shall be brought by the City Attorney, District Attorney or Attorney General in the name of the people of the State of California, and any actions relating to the same violation may be joined or consolidated.

1. In any civil action brought pursuant to this chapter in which a temporary restraining order, preliminary injunction or permanent injunction is sought, it is not necessary to allege or prove at any stage of the proceeding any of the following:

a. Irreparable damage will occur should the temporary restraining order, preliminary injunction or permanent injunction not be issued.

b. The remedy at law is inadequate.

2. The court shall issue a temporary restraining order, preliminary injunction or permanent injunction in a civil action brought pursuant to this chapter without the allegations and without the proof specified in subdivision (1).

B. Any person who provides information which materially contributes to the imposition of a civil penalty, whether by settlement or court order, as determined by the City Attorney, District Attorney or the Attorney General filing the action, shall be paid a reward by the administering agency or the State equal to ten percent of the amount of the civil penalty collected. No reward paid pursuant to this subdivision shall exceed five thousand dollars.

C. Any person who provides information which materially contributes to the conviction of a person or business under this chapter as determined by the City Attorney, District Attorney or the Attorney General filing the action, shall be paid a reward by the administering agency or the State equal to ten percent of the amount of the fine collected. The reward shall be paid from the amount of the fine collected. No reward paid pursuant to this subdivision shall exceed five thousand dollars.

D. No informant shall be eligible for a reward for a violation known to the administering agency unless the information materially contributes to the imposition of criminal or civil penalties for a violation specified in this section.

E. If there is more than one informant for a single violation, the person making the first

notification received by the office which brought the action shall be eligible for the reward, except that if the notifications are postmarked on the same day or telephoned notifications are received on the same day, the reward shall be divided equally among those informants.

F. Public officers and employees of the United States, the State of California, or counties and cities in this State are not eligible for the reward pursuant to subsections B or C, unless the providing of the information does not relate in any manner to their responsibilities as public officers or employees.

G. An informant who is an employee of a business and who provides information that the business has violated this chapter is not eligible for a reward if the employee intentionally or negligently caused the violation or if the employee's primary and regular responsibilities included investigating the violation, unless the business knowingly caused the violation.

H. The administering agency or the State shall pay rewards under this section pursuant to the following procedures:

1. An application shall be signed by the informant and presented to the administering agency or the State within sixty days after a final judgment has been entered or the period for an appeal of a judgment has expired.

2. The determination by the District Attorney or City Attorney or Attorney General as to whether the information provided by the applicant materially contributed to the imposition of a judgment under this chapter shall be final.

3. The administering agency or the State shall notify the applicant in writing of its decision to grant or deny a reward within a reasonable time period following the filing of an application.

4. Approved reward claims shall be paid by the administering agency or the State within thirty days of the collection and deposit of the penalties specified in subsections B and C.

- I. The names of reward applicants or informants shall not be disclosed by the administering agency or the State unless the names are otherwise publicly disclosed as part of a judicial proceeding.

- J. Notwithstanding any other provision of this section, rewards paid by the State shall only be paid after appropriation by the Legislature. (Ord. 5569 § 1, 1987)